IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JU**RISDICTION**

WRIT PETITION NO.4899/05

Rajendra Murlidhar Gorawade .. Petitioner.

Verus.

Late Vanabai Mankoji Dhone Trust through its Trustees .. Respondents.

Mr.P.S.Dani for petitioner.

Mr. P.B. Shah for respondent.

CORAM: SMT.N.N.MHATRE,J.

DATE : 12TH SEPTEMBER 2005.

P.C.

1. The Petition has been filed by the petitioner challenging the impugned order passed by the appellate court. The appeal has been allowed and a mandatory injunction has been issued to demolish unauthorised construction as prayed in prayer clause A of the plaint. The petitioner was directed to hand over peaceful possession of the premises on or before 15th November 2003 to the plaintiff. The Petitioner who was the second defendant in the suit challenges the order by contending that he was not served with the appeal and the appeal was heard in his absence. An order passed on such appeal was illegal. Mr. Shah on instructions from respondent no.3 who is the Chief Secretary of the Trust seeks liberty to

delete the petitioner from the array of respondents in the appeal as well as defendants in the suit. In these circumstances, plaintiffs are permitted to delete the petitioner from the array of respondents in the appeal and also as defendant before the trial court.

2. In view of the fact that the petitioner is no longer a party to the suit proceeding, decree passed against the defendant no.2, who is petitioner, does not survive.

3. The respondents are at liberty to take appropriate steps against Defendant NO.1.

(SMT.N.N.MHATRE,J)